

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO

IN RE:

DONALD A. HARMAN,

Debtor.

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CASE NUMBER 00-41218

CHAPTER 7

HONORABLE KAY WOODS

ORDER DENYING MOTION TO PROCEED *IN FORMA PAUPERIS*

Debtor Donald A. Harman filed a motion on September 13, 2004 to proceed with an appeal by *in forma pauperis* status. Debtor appeals from an order that was entered on September 16, 2004 memorializing the Court's decision at the hearing on September 2, 2004 on an order to show cause.¹ The Debtor is no longer incarcerated, as set forth in Debtor's motion.

28 U.S.C. § 1915 sets forth certain limited circumstances under which a person may proceed *in forma pauperis*. 28 U.S.C. § 1915(a)(3) provides that an appeal may not be taken *in forma pau-peris* if the trial court certifies in writing that it is not taken in good faith. Based upon the fact that Debtor sought to reopen his bankruptcy case for the limited purpose of having the Court issue an order to show cause why Creditor Joseph Davilla, Sr. should not be held in contempt for attempting to collect on a

¹Debtor actually filed his motion to appeal prior to the entry of the order memorializing the Court's decision.

discharged debt, and further based upon the undisputed fact that Creditor Davilla has not attempted to collect on the debt from Debtor, but rather has only attempted to foreclose a judgment lien on real property owned by a third party² (not the Debtor), any appeal of the denial of the order to show cause is without merit and is not taken in good faith. Accordingly, this Court denies Debtor's motion to proceed *in forma pauperis*.

IT IS SO ORDERED.

**HONORABLE KAY WOODS
UNITED STATES BANKRUPTCY JUDGE**

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Order was placed in the United States Mail this _____ day of September, 2004, addressed to:

DONALD A. HARMAN, 61 North Montgomery Avenue,
Youngstown, OH 44506.

RICHARD G. ZELLERS, ESQ., 3810 Starrs Centre
Drive, Canfield, OH 44406.

SAUL EISEN, United States Trustee, BP America

²The validity and continuing nature of the judgment lien has been upheld pursuant to a final order of the Bankruptcy Court dated July 31, 2003 in Case Number 03-40063 (*In re Nancy Sparks*).

Building, 200 Public Square, 20th Floor, Suite
3300, Cleveland, OH 44114.

JOANNA M. ARMSTRONG